

Serial No. 10/790,890, filed 3/2/04

REMARKS

Claims 1-19 are presently pending in the application. Claims 1, 5, 6, 12 and 16 are in independent form. Claims 5-8 and 12 were indicated as allowable if amended to include the limitations of the base claim and any intervening claims. Claims 5, 6 and 12 have been amended to an independent form by this amendment.

Claims 1-4, 9-11 and 16-19 were rejected under §103 over DeParavicini in view of Simadiris. Claims 13-15 were rejected under §103 over DeParavicini in view of Simadiris and in further view of Gould. The Examiner has reiterated the rejections verbatim relative to the previous Office Action.

In paragraph 5 on page 3 of the August 17, 2005 Office Action, the Examiner has made three points. First, the Examiner states that the secondary reference, Simadiris, "is used as a secondary teaching to support the provision of a galley cart." Second, the Examiner states that Simadiris and DeParavicini are "in the same environment." Third, the Examiner argues that "Applicant has not provided any explanation as to why Simadiris cannot be used to supply the missing elements in the claimed invention."

Applicant does not dispute the Examiner's first point. Clearly DeParavicini is missing a galley cart, and Simadiris discloses a galley cart. However, this point does not establish a prima facie case of obviousness. More is needed. That is, the Examiner must establish that there is some sort of suggestion or motivation in the references to modify DeParavicini to include the missing limitation of the galley cart, which is disclosed in Simadiris. Merely providing a missing limitation with another reference does not establish a prima facie case of obviousness.

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There is no motivation or suggestion for one of ordinary skill to modify DeParavicini for at least the reasons argued by the Applicant in their previous response.

The Examiner's second point regarding DeParavicini and Simadiris being in the same environment merely establishes that the two references are analogous art. Again, the Applicant does not dispute this point either. But, references being analogous art is merely a threshold requirement that must be satisfied before an obviousness analysis can be done. However, references being analogous art does not establish a *prima facie* case of obviousness. Again, there must be a suggestion or motivation to modify the base reference to include the missing limitation disclosed in the secondary reference. The Examiner's "motivation" has been "for the purpose of providing" the missing limitation, which is hindsight reasoning.

In the Examiner's third point, the Examiner argues that Applicant has not provided any explanation as to why Simadiris cannot be used to supply the missing limitation. However, it is the Examiner that has the burden of establishing a *prima facie* case of obviousness. Nonetheless, Applicant has provided reasons why the combination is improper on pages 2 and 3 of Applicant's prior response. Since the Examiner has not provided a suggestion or motivation, then the Examiner has not met his burden. Accordingly, it is the Examiner that has not provided an adequate explanation as to why the references should be combined, in particular, in the face of Applicant's arguments in its response. In fact, the Examiner has not even addressed the specific points raised by Applicant.

Furthermore, the Examiner has not replied to the Applicant's arguments regarding claims 3, 4, 9, 10, 11 and 19. Moreover, the Examiner has not addressed the Applicant's arguments regarding claims 13-15, which relate to Gould. Finally, the Examiner's arguments regarding

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"duplication of parts" and "obvious choice" are not sufficient for setting forth a *prima facie* case
of obviousness. That is, the Examiner is not permitted to take such short cuts and fail to provide
a motivation for modifying the base reference.

It is believed that this application is in condition for allowance. Please charge \$400.00
for two additional independent claims in excess of three to Deposit Account No. 50-1482 in the
name of Carlson, Gaskey & Olds, P.C. If any additional fees or extensions of time are required,
please charge to Deposit Account No. 50-1482.

Respectfully submitted,

CARLSON, GASKEY & OLDS



William S. Gottschalk
Registration No. 44,130
400 W. Maple, Suite 350
Birmingham, MI 48009
(248) 988-8360

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